REMARKS

Claims 1-5, 10 and 19 are pending. Claims 4, 6-9, 11-18, and 20-30 are canceled. Claims 1 and 19 have been amended. Support for the amendments can be found in the original claims as filed and in the specification, particularly at paragraphs [0074]-[0082]. Reconsideration of the pending claims in view of the amendments and remarks provided herein is respectfully requested.

Claim 19 is Definite

Claim 19 is rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for reciting the phrase "non-interfering substituent." Applicants disagree. Nevertheless, to advance the prosecution of the present case, this phrase has been defined in view of the disclosure. As such, the present rejection is overcome.

The Pending Claims are Novel

The pending claims stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by WO 2004/024159, which the Patent Office has characterized as being useful for the treatment of lung fibrosis resulting from excessive activity.

To be anticipatory under 35 U.S.C. § 102, a reference must teach each and every element of the claimed invention. *See Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379 (Fed. Cir. 1986). "Invalidity for anticipation requires that all of the elements and limitations of the claim are found within a single prior art reference. . . . There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention." *See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991).

The pending claims are directed to improving lung function which has been lost due to disease or other condition. Claim 1 has been amended to incorporate the limitation of claim 4, which states that the disease or condition benefiting from the improvement of lung function is unaccompanied by lung fibrosis. This amendment serves to distinguish further the claimed subject matter from the cited art. As such, the cited art does not teach all the limitations of the claimed invention. Thus, it does not anticipate the pending claims.

Double Patenting

The pending claims have been provisionally rejected under the nonstatutory double patenting doctrine over claims 20 and 20 of copending Application No. 10/660,115 and claims 1-3, 13, and 32 of copending Application No. 10/440,428. Applicants will address this rejection when one of these cases in condition for allowance.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 219002034100. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

By _____

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